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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION**

In re: CATHODE RAY TUBE (CRT)
 ANTITRUST LITIGATION

This Document Relates to Individual Case No.
 3:13-cv-02171-SC

Master File No. 3:07-cv-05944-JST (N.D. Cal.)
 MDL No. 1917

DELL INC. and DELL PRODUCTS L.P.,
 Plaintiffs,
 v.
 HITACHI, LTD., *et al.*,
 Defendants.

**DECLARATION OF DEBRA D.
 BERNSTEIN IN SUPPORT OF DELL INC.
 AND DELL PRODUCTS L.P.'S RESPONSE
 IN OPPOSITION TO STATE OF
 ILLINOIS' MOTION TO FILE
 DOCUMENTS ON THE PUBLIC RECORD**

1 I, Debra D. Bernstein, declare as follows:

2 1. My name is Debra D. Bernstein. I am a partner with the law firm of Alston & Bird LLP,
3 counsel for Plaintiffs Dell Inc. and Dell Products L.P. (collectively, “Dell”) in the above-captioned
4 action in the U.S. District Court for the Northern District of California.

5 2. I have personal knowledge of the matters in this declaration and, if I were called to
6 testify, I would do so completely and under oath.

7 3. Dell was a Plaintiff in *In re: Cathode Ray Tube (CRT) Antitrust Litigation*, Case No.
8 3:07-CV-5944 (MDL No. 1917) (N.D. Cal.) (“CRT MDL”). It is a leading technology company,
9 offering a broad range of technology products, solutions, services, and support. Dell sells a number of
10 models of notebook and desktop computers and previously sold Cathode Ray Tube (“CRT”) monitors,
11 which are at issue in this litigation.
12

13 4. The State of Illinois has requested that Dell file publicly on the docket un-redacted
14 versions of numerous different motions and responses filed in the CRT MDL. Some, but not all, of the
15 motions and responses that the State of Illinois has requested that Dell file publicly are Dell’s
16 Opposition to Defendants’ Motion for Summary Judgment with Respect to Dell’s Foreign Purchases
17 [Dkt. No. 3234-3], Dell’s Response in Opposition to Defendants’ Joint Motion for Partial Summary
18 Judgment on Statute of Limitations Grounds [Dkt. No. 3230-3], Dell’s Reply Memorandum in
19 Opposition of Defendants’ Motion for Summary Judgment with Respect to Dell’s Foreign Purchases
20 [Dkt. No. 3432], and Dell’s Reply Memorandum in Opposition of Defendants’ Motion for Summary
21 Judgment on Statute of Limitations Grounds [Dkt. No. 3432]. The State of Illinois further asks that
22 Dell refile publicly hundreds of exhibits that Dell filed in support of these motions and responses.
23

24 5. Portions of each of these motions and responses, along with many of the exhibits in
25 support, were designated by Dell or other parties as “Highly Confidential” under the Protective Order
26 (MDL Dkt. No. 306) (“MDL Protective Order”) in the CRT MDL. The MDL Protective Order defines
27
28

1 “Highly Confidential Information or Items” as those items that are “extremely sensitive Confidential
2 Information or Items whose disclosure to another Party or non-party would create a substantial risk of
3 injury that could not be avoided by less restrictive means.”

4 6. In the initial filing of the dispositive motions and responses, Dell and its attorneys spent
5 many hours reviewing and preparing its motions, responses, and supporting exhibits for filing.
6

7 7. In the fourteen days since the State of Illinois lodged its Motion to File Documents on
8 the Public Record, Dell has identified at least four Dell documents requested to be unsealed by the
9 State of Illinois’ Motion for which Dell opposes the State of Illinois’ Motion and believes the
10 documents should be maintained under seal. Specifically, included in the exhibits that the State of
11 Illinois asks Dell to file publicly are (a) the Master Purchase Agreement (“MPA”) between Dell and
12 U.S. Philips Corporation [attached as Ex. 8 to Dkt. No. 3234-1], (b) the MPA between Dell and
13 Samsung Electronics Company, Ltd. [attached as Ex. 9 to Dkt. No. 3234-1], (c) the Strategic Alliance
14 Agreement (“Strategic Agreement”) between Dell and Koninklijke Philips Electronics N.V. [attached
15 as Ex. 25 to Dkt. No. 3234-1 and Ex. 8 to Dkt. No. 3238-1], and (d) the Strategic Alliance Agreement
16 for Long Term Supply & Procurement between Dell and Samsung Electronics Co., Ltd. [attached as
17 Ex. 24 to Dkt. No. 3234-1].
18

19 8. The MPAs and Strategic Agreements contain critical terms and conditions that govern
20 the commercial relationship between Dell and its respective suppliers related to CRT monitors and
21 commodities other than CRT monitors. The MPAs and Strategic Agreements are detailed and
22 commercially sensitive, and their disclosure would provide other technology companies with an unfair
23 commercial advantage when negotiating with Dell. Given the sensitive nature of the MPAs and
24 Strategic Agreements and the obligations thereunder, Dell is contractually bound under these
25 agreements to keep their respective terms confidential.
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1 9. Public disclosure of the MPAs and Strategic Agreements would cause Dell significant
2 economic harm by providing Dell's suppliers and competitors with an improper business advantage by
3 disclosing to them the exact terms upon which Dell deals with other suppliers and confidential details
4 about Dell's negotiations with suppliers. Consistent with the commercially sensitive nature of this
5 information, Dell has executed contracts, including non-disclosure agreements, which protect the
6 MPAs and Strategic Agreements from public disclosure.
7

8 10. Dell initially executed the MPAs and Strategic Agreements some years ago: the Philips
9 and Samsung MPAs in 1998, and the Philips and Samsung Agreements in 2002. However, the MPAs
10 and Strategic Agreements include lengthy terms or auto-renewal clauses, meaning that despite their
11 execution dates, three of the four are still currently active agreements. Moreover, the MPAs and
12 Strategic Agreements relate to Dell's purchasing of multiple, separate components, including not only
13 CRTs, but also products such as liquid crystal display panels, optical disk drives and memory, which
14 are products still purchased by Dell.
15

16 11. Exhibits filed in support of Dell's motions, responses and replies in the CRT MDL
17 include not just the MPAs and Strategic Agreements but also witness testimony and declarations that
18 refer to these documents and their provisions.
19

20 12. Dell has previously sought to protect its MPAs and Strategic Agreements from
21 disclosure in other cases pending in the United States District Court for the Northern District of
22 California and those motions for seal have been granted. *See, e.g., In re: TFT-LCD (Flat Panel)*
23 *Antitrust Litig.*, 07-md-1827 (N.D. Cal.) (MDL Dkt. Nos. 1970, 1973); *In re Optical Disk Drive*
24 *Products*, 10-md-02143 (N.D. Cal.) (MDL Dkt. Nos. 122, 1240, 1557, 1686, 1839).
25

26 13. Dell's attorneys have confirmed with counsel for Koninklijke Philips Electronics N.V.
27 and Samsung Electronics Company, Ltd. (the counter parties to Dell in the MPAs and Strategic
28 Agreements) that they also support maintaining the MPAs and Strategic Agreements under seal.

1 14. Dell is no longer an active litigant in the CRT MDL. Rather, Dell has dismissed its
2 claims against Defendants. [See, e.g., Dkt. Nos. 4163, 4595, 4600, 4606, 4715, 4784, 4915.]

3 Executed on December 12, 2016 in Atlanta, Georgia.

4
5 Respectfully submitted,

6 /s/ Debra D. Bernstein

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